

Serial No. 09/917,782  
Docket No. 1509-203  
Page 8

REMARKS

Claims 1, 3-6, 8-13, and 16-20 are pending. Claims 4, 7, and 14 were cancelled without prejudice or disclaimer in the Amendment filed March 17, 2004. Withdrawn claims 21-44 are now also cancelled without prejudice or disclaimer. Applicants reserving the right to file one or more divisional applications directed to the subject matter of these claims.

Claims 1, 3, 5, 6, 9-11, and 16-20 are amended for consistency in syntax and punctuation. In addition, claims 1, 5, and 10 are amended to more clearly indicate that the information is transferred from the reserve storage area only to a centralized storage area. This change does not raise new issues requiring further consideration and/or search, because it was implied from the requirement in claims 1, 5, and 10 that the centralized storage area be configured to store the information relating to substantially all the partitioned logical data.

Accordingly, entry of the amendments to the claims is in order, and such action is respectfully requested.

Applicants traverse the rejection of claims 1, 3-6, 8-13, and 16-20 under 35 U.S.C. §102(e) as being anticipated by Shaath et al. (U.S. 6,546,384).

The rejection does not consider all requirements of claims 1, 5, and 10. In particular, the Office Action does not discuss the claim 1 requirement that "said centralized storage area is configured to store said information relating

Serial No. 09/917,782  
Docket No. 1509-203  
Page 9

to substantially all said partitioned logical data". The Office Action does not mention the claim 5 limitation that "said centralized storage area stores said information relating to substantially all said partitioned logical data". The Office Action also fails to consider the claim 10 requirement for "said centralized storage area being configured to store information relating to substantially all said partitioned logical data". Hence, the anticipation rejection is, on its face, improper and should be withdrawn.

Consideration of Shaath indicates the reference does not disclose the foregoing limitations of independent claims 1, 5, and 10. Instead, the index information in Shaath is distributed over many indexes. As described at column 6, lines 5-12, each file has an index. Starting from the last written index, the searching apparatus is merely directed to various other additional indexes to locate the desired data. Shaath specifically states that the index field stores key positions of additional index fields. Furthermore, the reference in the Office Action to column 6, lines 21-24, of Shaath is inappropriate, since this passage relates to use of a system under normal circumstances with a working hard disk, whereas the passage at column 6, lines 35-50, relates to a completely different set of circumstances in which, for example, the hard disk has crashed. Consequently, the description at column 6, lines 35-50, cannot be correctly combined with the description at column 6, lines 21-24, to

Serial No. 09/917,782  
Docket No. 1509-203  
Page 10

anticipate claims 1, 5, and 10, which are not concerned with a crashed hard disk.

If the Examiner is relying on inherency, she has failed to meet the burden of establishing inherency. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). To establish inherency, extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. Inherency may not be established by possibilities or probabilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). In relying upon a theory of inherency, the Examiner must provide a basis in fact or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (B.P.A.I. 1990). The required rationale or evidence has not been shown to conclude that Shaath inherently discloses a centralized storage area that stores information relating to substantially all partitioned logical data.

Serial No. 09/917,782  
Docket No. 1509-203  
Page 11

The remaining claims are patentable over Shaath for, *inter alia*, the same reasons advanced for independent claims 1, 5, and 10, upon which they depend.

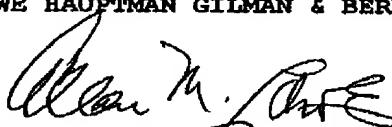
In view of the foregoing amendments and remarks, favorable reconsideration and allowance are respectively requested and deemed in order.

To any extent necessary, Applicants hereby request an extension of time in which to file this paper. The Commissioner is hereby authorized to charge any omitted fees, including extra claims and extension fees, to Deposit Account No. 07-1337.

Respectfully submitted,

LOWE HAUPTMAN GILMAN & BERNER, LLP

By:

  
Allan M. Lowe, Reg. No. 19,641

1700 Diagonal Road, Suite 300  
Alexandria, VA 22314  
703-684-1111 telephone  
703-518-5499 telecopier  
AML:rk